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**CLEVELAND OH 44114**

**MAILED**

**MAY 07 2009**

**OFFICE OF PETITIONS**

In re Application of :  
Kamal Jain et al :  
Application No. 10/782,687 : **DECISION ON PETITION**  
Filed: February 19, 2004 :  
Attorney Docket No. :  
MS306434.1MSFTP526US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed February 4, 2009, to revive the above-identified application.

The petition is **GRANTED**.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of an RCE and an amendment; (2) the petition fee; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the final rejection mailed July 14, 2008, is accepted as having been unintentionally delayed.

*As to the Request For Waiver Of Fee Under 37 C.F.R. §1.17(m):*

The request for waiver of the petition fee is dismissed because the admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution, or any related proceedings will not operate to relieve the application or reexamination proceeding from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination prosecution from termination under § 1.550(d) or §1.957(b) or limitation of further prosecution under § 1.957(c). See 37 CFR 1.116(c).

Further, MPEP 711.03 (c) states that:

[T]he petition fee is required for the filing (and not merely the grant) of a petition under 37 CFR 1.137. See H.R. Rep. No. 542, 97<sup>th</sup> Cong., 2d Sess. 6 (1982), reprinted in 1982 U.S.C.C.A.N. 770 (“[t]he fees set forth in this section are due on filing the petition”). Therefore, the Office: (A) will not refund the petition fee required by 37 CFR 1.17(1) or 1.17(m), regardless of whether

the petition under 37 CFR 1.137 is dismissed or denied; and (B) will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.

As the petition fee was not charged by credit card, the fee of \$1,620.00 is being charged to deposit account no. 50-1063 as authorized.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

This application is being referred to Technology Center AU 3628 for appropriate action by the Examiner in the normal course of business on the reply received February 4, 2009.

A handwritten signature in black ink that reads "Karen Creasy". The signature is written in a cursive, flowing style.

Karen Creasy  
Petitions Examiner  
Office of Petitions